THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :22049 of 1999

DATED:24-10-2007

BETWEEN:

Karnati Mallaiah & another.

..... PETITIONERS

AND

The Joint Collector,
Mahabubnagar & 2 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioners; learned Government Pleader for Revenue; and the learned counsel appearing for the respondents.

2. Petitioners seek a writ of Certiorari calling for the records of impugned order, dated 09-08-1999, passed in Appeal No.B2/10/99 by the 1st respondent dismissing the appeal filed by the petitioners under Section 24 of the A.P.(Telangana Area) Abolition of Inams Act, 1955 (for brevity, 'the Act') filed as against the order, dated 15-06-1998, in File No.K/4963/92, passed by the 2nd respondent conferring occupancy rights in favour of the 3rd respondent in respect of lands bearing Sy.Nos.307, 308, 309, 310 and 311, admeasuring Ac.5.29 guntas situated at Santhapur village, Kesampet mandal, Mahabubnagar District, and quash the same.

3. 2nd respondent-Revenue Divisional Officer, Mahabubnagar by the aforesaid order, dated 15-06-1998, granted occupancy rights in favour of the father of the 3rd respondent namely Butchaiah, who is the son of one Gangamma in respect of the inam lands of Ac.5.29 guntas in Sy.No.307 to 311 situated at Santhapur village, Kesampet mandal, Mahabubnagar District. The said order of the 2nd respondent was questioned by way of filing an appeal under Section 24(1) of the Act by both the petitioners

herein before the 1st respondent-Joint Collector, Mahabubnagar District, and the appellate authority also by the impugned order dismissed the appeal.

4. It is the case of the 2nd petitioner that her mother and the grand mother of the 3rd respondent are the joint inamdars of the said land in question and therefore, they are entitled for occupancy rights in respect of the equal shares in the said property but the 2nd respondent erroneously granted occupancy rights in favour of the son of the said Gangamma i.e., the father of the 3rd respondent on the ground that there was an oral partition in respect of the patta properties and inam properties held by the said Anthamma and Gangamma, and the patta properties have fallen to the share of the said Anthamma and the inam properties to the share of the said Gangamma and therefore, the said Gangamma alone is entitled for the occupancy rights.

5. It is the case of the 1st petitioner that the half share of the said Gangamma has been purchased by the father of the 1st petitioner vide unregistered sale deed, dated 06-04-1979, and therefore, the 1st petitioner is also entitled for occupancy rights in respect of the half share in the said land.

6. The brief facts of the case are that in respect of the said property three persons filed applications for the occupancy rights i.e., the 1st petitioner, 2nd petitioner, and the father of the 3rd respondent. The competent authority who is authorized to grant Occupancy Right Certificate in respect of the inam lands initially considered the rival contentions and held that there was an oral partition and as per the oral partition inam lands have fallen to the

share of the grand mother of the 3rd respondent and therefore, the father of the 3rd respondent alone is entitled for the occupancy rights, and accordingly passed orders in Case No.K/1823/88, dated

07-11-1988. As against the said orders petitioners herein filed an appeal before the 1st respondent, and the 1st respondent by order, dated 04-01-1990, in Case No.B2/43/88, set aside the order and remanded the matter to the 2nd respondent for *de novo* enquiry. Pursuant to the said remand order, 2nd respondent conducted enquiry and granted Occupancy Right Certificate in favour of the petitioners by order, dated

22-01-1991, in Case No.K/111/90. Aggrieved by the said order, the father of the 3rd respondent filed an appeal before the 1st respondent in Case No.B2/9/91, and the 1st respondent by order, dated 28-08-1992, allowed the appeal and remitted back the matter to the 2nd respondent for disposal keeping in view the observations made in the said order. In the said order, 1st respondent observed that the original inamdars namely Anthamma and Gangamma are the joint inamdars in respect of the said property as per the Khasrapahani for the year, 1954-55. As per the records the father of the 3rd respondent was alone found in possession of the said lands but not the petitioners herein and according to the xerox copies of the registered sale deeds bearing No.331/75, 332/75, 2109/81, and 714/85, the properties fallen to the share of the said Anthamma were sold away by her and the claim of the 1st petitioner based on the unregistered sale deed is not tenable as he has not established his claim based on the unregistered sale deed as the said document was not at all proved by examining the attestor, scribe etc., Pursuant to the remand

order the Revenue Divisional Officer has taken up the case for enquiry keeping in view the observations made by the Joint Collector and in Case No.K/4963/92, dated 15-06-1998, granted the Occupancy Rights Certificate in favour of the father of the 3rd respondent under Section 4 of the Act. The Revenue Divisional Officer by the said order considered the rival contentions and held that the father of the 3rd respondent was only found in possession of the said land and there was no material whatsoever to prove the possession of the petitioners during 1973-74, but the entry made for the year, 1973-74, showing the possession of the purchaser is obviously tampered. As according to him he has purchased the said property vide unregistered sale deed on 06-04-1999. Aggrieved by the said order petitioners filed appeal before the Joint Collector, and the Joint Collector by the impugned order, dated 09-08-1999, in appeal No.B2/10/99 dismissed the appeal holding that the unregistered sale deed has not been proved, but however, the said unregistered sale deed is not a valid document and cannot be acted upon as there is a legal prohibition to transfer the inam land after vesting the lands into the Government. The Joint Collector relied on a judgment of this Court in ***LOKRAJ AND OTHERS v. KISHAN LAL AND OTHER*** [1].

7. Learned counsel appearing for the petitioners submits that as per the judgment of a learned single Judge of this Court in ***BHIMAVARAPU VENKAIAH AND ANOTHER v. REVENUE DIVISIONAL OFFICER, KOTHAGUDEM AND OTHERS***[2], purchaser is also entitled for the occupancy rights and the Division Bench of this Court in ***S.VEERA REDDY AND ANOTHER v. CHETLAPALLI CHANDRAIAH AND OTHERS***[3] held that the

inamdar had a right of abolition of inams to transfer his right in favour of the purchasers and therefore, the purchaser is also entitled to occupancy rights.

8. On the other hand, Sri Mahipathi Rao, learned counsel appearing for the 3rd respondent, submits that as per the said judgments of this Court no one holds the plea in view of the judgment of the Supreme Court in ***Lokraj's*** case (1 supra) which was relied on by the Joint Collector/appellate authority in the impugned order.

9. In the said case, Supreme Court held that as per the Abolition of Inams Act once the land is vested in the State Government free from all encumbrances, the inamdar thereby loses the pre-existing rights, title, and interest in the land and therefore, the right of abolition itself has been lost by the statutory operation unless re-grant is made. It is stated that in the instant case unless the original inamdar gets the re-grant he will not have any right to alienate the said property.

10. Following the aforesaid judgment of the Supreme Court the learned single Judge of this Court in ***CHAMA NARASIMHAREDDY AND ANOTHER v. JOINT COLLECTOR, RANGAREDDY DISTRICT, HYDERABAD AND OTHERS***[4] held, with regard to the question whether the purchasers from inamdars are entitled for Occupancy Right Certificate, as follows:

> "Reading of Sections 4,5,6,7 and 8 read with 10 of Inams Abolition Act would show that so as to be registered as occupant of agricultural inam land, different categories of persons have to show that as on the date of vesting they were in possession of such land in whatever

capacity they claim. The Inams Abolition Act abolished imams with effect from 20-07-1955 and the Government declared 01-11-1973 as the date of vesting for the purpose of Sections 4 to 8. Therefore, though all the imams stood abolished and the land vested in the State is free from encumbrances with effect from 20-07-1955, all the persons who were in possession of the land as on 01-11-1973 are entitled for Occupancy Right Certificate. If a person claims to be successor in interest of inamdar by reason of a sale after 20-07-1955, such sale cannot be recognized for the simple reason that from that date, the land vested in the State and all rights to inam land stood abolished. The inamdar had therefore no right to transfer the property to a third party after 20-07-1955 when he became incompetent to transfer the property.

"Under Section 6 of Transfer of Property Act, the property of any kind may be transferred but as per Section 6(d), an interest in the property restricted in its enjoyment to the owner personally cannot be transferred by such owner. It may be noticed that under Section 3(2)(g) of Inams Abolition Act, an inamdar or any other person whose rights have been vested in the State under Section 3(2)(b), shall be entitled to only compensation as provided under the Inams Abolition Act and different categories of occupants are entitled to such rights and privileges subject to such conditions as provided under the Act. Therefore, though after the date of vesting the occupants or inamdars are entitled to continue to be in occupation, they are entitled to transfer such limited interest to enjoyment to third parties. The question whether a sale or inam land by inamdar after the date of vesting is valid or not, is no more *res integra.*

11. Insofar as the claim of the 1st petitioner is concerned, the unregistered sale deed has not been proved by adducing any cogent evidence, however, as per the aforesaid judgment the said unregistered sale deed is deemed to have been null and void and therefore, he is not entitled for any occupancy rights. Insofar as the claim of the 2nd petitioner is concerned, I am of the opinion that the original authority as well as the appellate authority rightly held that there was an oral partition and the patta lands fallen to the share of Anthamma have been transferred and in the inam lands fallen to the grand mother of the 3rd respondent as on the crucial date

01-11-1973 the father of the 3rd respondent was alone found in possession of the said lands and therefore, the father of the 3rd respondent was entitled to grant occupancy rights and accordingly occupancy rights have been rightly granted in his favour which has been upheld by the appellate Court.

12. In view of the aforesaid concurrent findings I am not inclined to express any different opinion. I do not see any merits in any of the contentions of the learned counsel appearing for the petitioners.

13. Accordingly, Writ Petition is dismissed. No order as to costs.

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V.ESWARAIAH,J

24th October, 2007.
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[1] 1955(2)ALT 18(DN)1993(3) SEC.291

[2] 1999(4) ALD 219

[3] 1995(2) ALT 172

[4] 2007(2) ALD 28